Québec's International Initiatives

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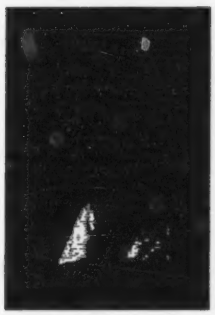
Québec in International Forums

Exercising Québec's constitutional rights at international organizations and conferences



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Because of its special place in the Canadian federation and the need to promote its identity, culture and prosperity, Québec must be present on the international stage. To ensure that it maintains control over its constitutional jurisdictions, Québec feels that it must be allowed to participate in international treaty negotiations, like other provinces that wish to do so. Québec must be free to express its point of view as a full member of Canadian delegations conducting negotiations in areas of Québec jurisdiction or that may have an impact on our interests.

The Evolution of International Relations

The impact of globalization on the Canadian federation

Globalization makes Québec's presence on the international stage even more imperative. Because it blurs the distinction between domestic and foreign policies, globalization is having an increasingly marked effect on Québec's constitutional jurisdictions. Globalization has an impact on jurisdictions that shape Québec's identity such as language, culture and education as well as on its other strategic interests such as health, labour, trade, sustainable development, the environment and human rights.

On top of this, Québec's identity and strategic policies and interests are facing an increasing number of restrictive international standards negotiated within the framework of international organizations and at international conferences.

The federal government, for its part, is signing more and more international agreements that must be implemented in whole or in part by the provinces. This problem is made worse by the actions of international governmental organizations that have a tendency to circumvent the difficulties encountered in negotiating agreements by developing plans of actions. The purely administrative nature of such documents makes it possible for the federal government to pretend that it represents all of Canada since it is not legally bound to implement them. It is clear that when Ottawa commits to agreements or plans of action it cannot implement,

this constitutes an encroachment on provincial jurisdictions and undermines Canada's credibility abroad.

It is with this in mind that the Government of Québec intends to claim its full constitutional rights on the international stage as a logical extension of its initiatives within the Canadian federation, while fully respecting Canada's foreign policy. All those areas in the Canadian constitution that are exclusive or shared provincial jurisdictions are the subject of decisions, negotiations and agreements at the international level. Many of the policy orientations and standards that guide government initiatives are increasingly determined at international forums.

The Premier of Québec, Jean Charest, has on numerous occasions insisted on provincial participation in international forums, especially when treaties are being negotiated that will have an impact on their jurisdictions:

> ***"What we want is to be at the negotiating table with the federal government if the topic being discussed overlaps Québec's jurisdictions. I no longer want the Canadian government to make commitments for Québec without Québec having a word to say."*** (speech at ÉNAP, February 25, 2004). On November 8, 2004, in Charlottetown, Premier Charest reiterated that ***"(w)hat is a Québec jurisdiction in Québec, is a Québec jurisdiction everywhere."***

Québec's areas of interest in international forums

Québec is primarily interested in international organizations and conferences that touch on nine areas where Québec has a constitutional responsibility or that are of fundamental importance for Québec society.

Culture, education, identity

The United Nations Educational, Scientific and Cultural Organization (UNESCO) deals with most of the identity issues for which Québec wishes to speak on its own behalf. In addition to drafting a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, UNESCO will be shortly examining other issues of interest to Québec.

In the education field, UNESCO is drafting an International Convention Against Doping in Sport. In the scientific field, it is preparing a Declaration on Universal Norms on Bioethics. It will also be examining the challenges facing public policies for youth and artistic education at the 2006 World Summit in Lisbon, as well as intangible heritage, technical and vocational training, and the information society. Since the work by UNESCO on these issues could lead to restrictive declarations or agreements, Québec wishes to contribute to defining the Canadian position, especially since it is the Government of Québec and Quebecers who are the experts in these areas, and who will be impacted by any decisions by UNESCO.

Québec is also interested in other organizations that deal with identity issues such as private law, education and culture.

Economic and social development

The work of the Organization for Co-operation and Economic Development (OECD) is also of prime importance, given the priorities of the Government of Québec regarding prosperity and solidarity. In the medium term, the work of the OECD will deal with the environment, the management of health infrastructures and systems, immigration, ageing populations, economic and territorial development, the security economy, employment, education, public governance, energy and biotechnologies.

The OECD is a forum where member governments work together to develop, compare and refine their economic and social policies. It also provides a setting where governments can co-ordinate domestic and foreign policies in a context of globalization. Several departments and agencies of the Government of Québec already participate in various OECD working groups looking at issues dealing with provincial jurisdictions.

If there is one area where the growing number of international agreements has an increasingly direct impact on provincial jurisdictions, it is without doubt trade. The challenges facing public services, including education and health, financial services and access to public markets are of utmost concern to the Government of Québec. Its participation in the multilateral trade negotiations at the World Trade Organization (WTO) is thus of paramount importance from a strategic point of view.

The same goes for regional trade negotiations, notably those arising from NAFTA on labour and the environment. Since the Summit of the Americas, which was held in Québec City in April 2001, the work of the Organization of American States (OAS) has become a focus of

attention for the Government of Québec because the resulting Declaration and Action Plan touch on a number of its areas of jurisdiction such as education, labour and justice.

Labour and employment

The International Labour Organization (ILO) is at the forefront of many issues that pertain to Québec's jurisdictions – promoting youth employment, examining atypical forms of work, applying labour laws to self-employed workers, studying labour relations, promoting investment in training and skills development, endorsing social protection measures, regulating occupational health and safety, determining minimum labour standards, integrating migrant workers, and even examining social protection measures in a context of globalization.

The ILO is a unique UN organization because of its tripartite structure. Governments, employers and workers all work together to achieve its goal. It is particularly active in setting standards that have an impact on the lives of all citizens.

Health

The risk of pandemics (like SARS), mutations of bacteria and viruses, antibiotic resistance, the HIV/AIDS epidemic and government measures to meet these challenges are the topic of discussions at the World Health Organization (WHO). WHO is the United Nations' specialized agency for health. Its mandate is "the attainment by all peoples of the highest possible level of health." Since Québec, like the other provinces, has direct responsibility for health, it must be at the forefront of monitoring the work of this organization. In this respect, it is worth recalling the problems Ontario faced during the SARS epidemic in 2003 in making its point of view known to international health authorities because of its lack of direct access to WHO.

Sustainable development and the environment

The Government of Québec has decided to make investment in sustainable development a top priority. As such, the work of international organizations and conferences on these issues will become increasingly important. The challenge of preserving biological diversity as well as our water and forest heritage will become increasingly acute.

A number of new international standards are being or will be implemented in the related areas of biosafety, access to genetic resources (Convention on Biological Diversity), air quality, climate change (Kyoto Protocol), protection of the ozone layer (Montréal Protocol), hazardous chemicals and pesticides (Rotterdam Convention) and persistent organic pollutants (Stockholm Convention).

The Government of Québec took part in the Earth Summit in Rio de Janeiro in 1992 and the World Summit on Sustainable Development in Johannesburg in 2002. It has also been continuously monitoring the activities of the Commission on Sustainable Development since it was established in 1993. The Commission is the highest-level forum for sustainable development at the United Nations.

Given the extent of Québec's forests, and their importance for Québec, the Government of Québec would like to be present at the upcoming negotiations at the United Nations Forum on Forests (UNFF). The UNFF, which was established in October 2000 with the mandate to promote the management, conservation and sustainable development of forests, must propose a management framework that can be applied to all types of forests.

The objectives of the Convention on Biological Diversity Convention are "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources." Québec adopted a Triennial Action Plan in June 2004 that is a major component of its Sustainable Development Plan. Québec feels that it must be able to defend its interests with respect to the implementation and updating of the Convention and related protocols. Québec's participation will also help it expand its expertise in this area.

Lastly, the United Nations Convention on Climate Change is a guide to intergovernmental efforts to reduce climate change. Québec has declared itself bound by this Convention and has adopted its own action plan. The Kyoto Protocol is another international instrument that will have an impact on Québec. The Kyoto Protocol, which came into effect on February 16, 2005, imposes legally restrictive limits on greenhouse gas emissions. Québec is also closely monitoring the United National Environment Program (UNEP). One of UNEP's missions is to "encourage partnerships in caring for the environment."

The information society

The World Summit on the Information Society (WSIS), which began in 2003, brings together members of the United Nations as well as representatives from the private and

public sectors and civil society to improve access to information and communication technologies (ICT) for developing countries. It is also tasked with the mission of examining issues such as establishing international standards in the fields of Internet governance and e-trade, promoting cultural diversity in electronic forums and protecting privacy and access to information. Québec has broad experience in information technologies and is seeking to become a leader in on-line government, which makes its involvement in WSIS even more pertinent.

Human rights

The mission of the United Nations Commission on Human Rights is to protect and promote all human rights for all. One of the Commission's most important tasks is to draft human rights standards. Québec has been part of the Canadian delegation and has participated in Commission sessions and major human rights events since 1975. Québec's presence is more than desirable, not only because of its expertise but also because it must adjust its legal system to the new human rights standards.

The status of women

Equality between men and women is one of the foundations of Québec society. The United Nations Commission on the Status of Women (CSW) was established to prepare recommendations and reports on promoting women's rights in political, economic, civil, social and educational fields. For a number of years now, the Government of Québec has been a member of the Canadian delegation at international conferences on women, which has enabled it to follow the evolution of international trends and to adjust its policies on the status of women.

Native issues

The Permanent Forum on Indigenous Issues serves as an advisory body to the United Nations Economic and Social Council, with a mandate to discuss native issues relating to economic and social development, culture, education, health, the environment and human rights. The Government of Québec follows the work of this body with great interest and studies its recommendations because they deal with provincial jurisdiction over native issues. ■

A Participative Framework for Québec

The Canadian Constitution and Québec law

The Canadian Constitution is mute on the issue of shared jurisdiction in matters of international relations. Québec bases its international initiatives on, among other things, the 1937 ruling by the Judicial Committee of the Privy Council in London that the power to implement international treaties falls under the purview of either the Parliament of Canada or the provincial legislatures, depending on whether the treaties deal with federal or provincial jurisdictions. In other words, the federal government cannot implement international agreements in areas of jurisdictions attributed to the provinces in the Constitution.

Moreover, the Act respecting the Ministère des Relations internationales stipulates that "every important international commitment" must be approved by the National Assembly and that the government can only issue an order in council to declare that it is bound by such a commitment and give its assent to the federal government after approval by the National Assembly.

Lastly, section 22.1 of the Act respecting the Ministère des Relations internationales stipulates that the Government of Québec must, in order to be bound by an international agreement pertaining to any matter within the constitutional jurisdiction of Québec, give its consent prior to the signing, ratification or accession to any such agreement by the Government of Canada.

The practice of Québec's international relations

In extending its domestic jurisdictions, Québec has, over the years, developed valuable expertise in relations with international organizations and through its participation in international conferences. It is, however, Canada, as a sovereign nation, that is a full member of international governmental organizations. Québec must thus act within Canadian delegations or use the Canadian government as an intermediary when it wishes to maintain official relations with international organizations operating in its areas of jurisdiction. Because of this, every time an international government organization deals with an issue involving Québec's jurisdictions or strategic interests, it must renegotiate the manner and terms of its participation. These terms can be reconsidered at any time by the federal government.

When there is an agreement with the federal government, Québec Ministers and public servants can take part in Canadian delegations at certain multilateral conferences. In recent years, Québec has partici-

pated, as a member of the Canadian delegation, in the drafting of certain international agreements, especially in the areas of labour relations, the environment and human rights. However, the nature of Québec's participation varies, depending on whether or not there is a formal mechanism for concerted action by the federal and provincial governments.

International agreements

Federal/provincial relations are the most formalized in the area of human rights. Provinces now participate in virtually every step in the drafting of human rights agreements, from the resolution stage at the UN Commission on Human Rights to the ratification of agreements and discussions on the impacts on domestic legislation. At the signing and ratification stages, there is also a formal procedure whereby the Government of Canada requires the consent of the provinces before proceeding. It is through this formal mechanism that Québec has been able to contribute the most to Canada's positions.

Member states must report regularly on the implementation of human rights agreements. Each province is responsible for drafting its own report, which becomes an integral part of the Canadian report.

There is an informal process by which the provinces present their points of view to the federal government when it draws up its position regarding the work of the International Labour Organization. Elsewhere, Québec's participation in the negotiation of international agreements regarding the environment is patchy, with the exception of the negotiations surrounding the Kyoto Protocol.

The International Labour Organization requires that member states submit separate reports on their implementation of labour conventions. In fact, the Constitution of the ILO refers, in the case of federated states, to the appropriate authority for the implementation of its conventions. However, Québec's implementation reports are not necessarily appended to Canada's reports.

There is a consultation mechanism between the federal and provincial governments on multilateral trade negotiations, including an annual ministerial conference, conferences at the sub-ministerial level and quarterly meetings of public servants to discuss ongoing negotiations and disputes. However, the Government of Québec deeply regrets that its representatives are unable to attend the negotiating sessions.

In Canada, responsibility for the implementation of international agreements very frequently falls, in full or in part, on the provinces. This responsibility implies the participation of the provinces in the mechanisms to monitor the application of these agreements or the implementation of these decisions.

A Canadian federal prosecutor presents arguments before a dispute settlement panel when disputes are submitted to the World Trade Organization (WTO), even when a Québec measure is being contested. In these cases, the Government of Québec helps draft the brief and its representative attends the hearing. However, when Canada contests a foreign measure, Québec is not invited to help draft the brief and is not invited to the hearing.

Lastly, the Government of Québec helps prepare comments to be submitted to international organizations in response to complaints concerning measures taken by Québec. It is notably called on when UN Special Rapporteurs conduct investigations in Canada.

International summits, conferences and working groups

Summits and major thematic conferences organized by the United Nations give rise to the adoption of declarations and plans of action. Most international organizations – or the bodies under their governance – hold annual or biennial sessions.

When the UN General Assembly or one of its organizations announces a forum of interest to Québec, the Ministère des Relations internationales informs the appropriate person at Foreign Affairs Canada that the Government of Québec wishes to participate. The Ministère des Relations internationales then negotiates with the federal government to set the number of Québec representatives in the Canadian delegation.

The Ministère des Relations internationales coordinates Government of Québec activities involving international organizations. In areas of Québec jurisdiction, it promotes the participation of government departments and agencies and sectoral organizations concerned by the activities of international working groups. When it wishes to establish official contacts with international organizations, the Government of Québec goes through the federal government. ■

A proposed agreement regarding Québec's participation in International forums

With the exception of the Francophonie, Québec's participation in international forums is subject to the vagaries of the moment and only very rarely does Québec have a true right to speak. A formal mechanism would provide Québec with a more coherent and predictable framework that would facilitate the exercise of its international responsibilities and eliminate the source of much friction arising from the arbitrary nature of the decisions authorizing Québec's participation in certain international forums.

An agreement on Québec's place in Canadian delegations at certain international organizations and conferences would not be a precedent. Since 1975, the means and mechanisms for implementing human rights agreements have enabled Québec to participate in drafting such agreements at sessions of the UN Commission on Human Rights and at other major events.

Based on this example, the agreement should ensure Québec's right to participate in the preparatory work, the negotiations, the implementation and the monitoring of decisions by international organizations and conferences. More specifically, as regards UNESCO, the agreement should include specific provisions on Québec's participation in the work of this organization.

Preparatory work

As a member of international organizations, the federal government has access to the strategic information on their activities that are of interest to Québec. It is the repository of all that is done at these organizations on behalf of Canadian provinces. Québec must have a say in the drafting, by the federal government, of its position on international instruments, reports, action plans or declarations. To enable it to play a full role and make a useful contribution, Québec must be informed sufficiently in advance of the preparatory work of the federal government.

This would be an opportune moment to draw on the model for the participation of the provinces in human rights and native issues, a model that has been used since 1975. When preparing for sessions of the Commission on Human Rights, the provinces receive copies of the draft resolutions of concern to them and are asked to make proposals for the Canadian position. Québec's representative participates in the annual sessions of the Commission and sits, next to the Canadian representative, on the committees that negotiate the resolutions. When a draft international agreement is tabled, the provinces are asked to comment, at every stage of the negotiations, on the various proposals submitted by member states.

Conducting negotiations

The number of Québec representatives in official Canadian delegations is often subject to arduous discussions with the federal government. The federal government argues that the number of Québec representatives must be limited to ensure fairness with the other provinces. However, it is rare that all provinces ask to participate. Québec is often the only province that wishes to participate, beginning with the preparatory work.

Even though a number of precedents exist, the decision to give Québec representatives a right to speak is at the sole discretion of the federal government. Québec contributes to drafting the Canadian position but the federal negotiators must often modify their position during the negotiation process. The presence of Québec representatives at international negotiations, that is, at the stage where concessions are being negotiated among or between the parties, is absolutely necessary to ensure that Québec's interests are adequately protected and, as warranted, so that it can lobby the federal negotiators. This is particularly important in the area of trade because of the increasing number of issues that impact provincial jurisdictions.

Member states of international organizations and states that participate in international conferences often express their positions in these forums, even when there are no formal negotiations. As soon as issues directly related to its jurisdictions are discussed, Québec should be consulted prior to any federal interventions, as with the procedures followed during sessions of the Commission on Human Rights.

Lastly, the Government of Québec would like to be free to present its experiences, its good practices and its implementation reports regarding the issues discussed at international conferences, without having Canada as an intermediary. Participation by the Government of Québec could include, as warranted, speeches or presentations by its representatives, the presence of its representatives at Québec or Canadian kiosks and receptions it hosts itself. It must be able to count on the collaboration of the federal government for this.

Implementation and follow-up

Québec's position is strongest as regards its jurisdiction in implementing and following up on the decisions of international organizations and conferences given the 1937 ruling by the Judicial Committee of the Privy Council on labour agreements.

Every year, Québec produces a large number of follow-up and monitoring reports on international decisions, conventions and agreements. In many cases, Québec's reports are incorporated into Canada's report, with no distinction between the Québec and Canadian sections. In other cases, Québec's full report is appended to the Canadian report. This is the approach that Québec would like to see formalized.

Lastly, Québec would like its right to participate in appearances by Canada before arbitration or dispute settlement bodies to be recognized. Currently, only in matters of human rights are the provinces authorized to take part in these appearances. This demand is of utmost importance for Québec, especially in trade disputes.

Specific rights with respect to UNESCO

UNESCO is the only organization whose statutes stipulate that each member state must establish a national commission to facilitate relations between it and the civil society of the member state. A Canadian Commission for UNESCO was created under the aegis of the Canada Council for the Arts. However, federal departments are the sole government bodies represented on the commission.

Over the years, the secretariat of the Canadian Commission for UNESCO has evolved into an instrument used by federal departments to prepare and follow up on Canada's participation in UNESCO. The exclusively federal nature of the Commission means that it does not lend itself to presenting Québec's positions to an international organization whose mandate, for the most part, deals with Québec jurisdictions such as language and culture.

The Government of Québec is not only better placed to consult Québec civil society as regards the international scope of its jurisdictions, it must, as such, be able to conduct its own interdepartmental consultations.

Given the number and importance of the issues debated at UNESCO that pertain to Québec's jurisdictions, Québec would like to be able to designate a permanent representative to this body, but who would be a member of the Canadian delegation. This representative should always have the right to speak, as part of the Canadian delegation, during discussions at UNESCO. ■

Conclusion

The Government of Québec is of the opinion that it is solely responsible for seeing to its interests and exercising its jurisdictions with regard to international organizations and conferences, and that the following principles must govern its participation in their work:

1- Québec must be a full member of Canadian delegations and must be free to appoint its own representatives to such delegations.

2- Québec must have access to all information and must be involved in helping plan the Canadian position prior to any negotiations.

3- Québec must have the right to speak for itself at international conferences and organizations.

4- Québec's right to consent before Canada signs or declares that it is bound by a treaty or agreement must be recognized.

5- Québec must have the right to present its position at appearances by Canada before the arbitration bodies of international organizations when Québec or its interests are affected.

This participative framework is essential. Above and beyond the constitutional jurisdictions of the provinces and Ottawa are the international realities that are having a direct impact on the activities and mandates of both levels of government. In an era of regional groupings, growing challenges to multilateralism and the emergence of a series of phenomena that are causing upheavals in the world order, we must present a common front to defend the interests of both Québec and Canada.

Québec's international relations are founded on a broad base of valuable assets. They rely on a tradition of openness, nearly fifty years of experience on the international scene, a network of contacts, a network of highly effective offices abroad, a mature administrative infrastructure and a body of over 300 international agreements. They are also founded on close relations with the United States, special, direct relations with France, Québec's status as a member of the Francophonie and its affinities with Europe. Québec has also acquired cutting edge experience in both bilateral and multilateral matters.

The place that Québec would like to occupy in international forums will enable it to promote its interests and, at the same time, strengthen the Canadian position as well as Canada's image and influence abroad.

Québec wishes to continue to affirm itself on the international scene and bring Canada's foreign policy more into line with the federal nature of the country. In short, greater efficiency, enhanced credibility and a stronger image of Canada as a whole.

A RESPECTFUL AFFIRMATION OF THE FEDERATIVE STATE

The very nature of international relations has undergone profound changes during the 20th century. Federal systems must reflect these changes and adapt to them. Taking inspiration from examples abroad, Québec wants the Government of Canada to recognize the legitimate role of non-sovereign entities in international relations and to institutionalize the rules for their international activities. Québec is seeking to continue to affirm itself on the international stage while, at the same time, ensuring that Canada's foreign policy better reflects the federal nature of Canada.

Jean Charest
Premier of Québec

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